

§ 452.35

504(a) by extending the period of disability or by barring from union office persons who have been convicted of crimes other than those specified.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985]

§ 452.35 Qualifications for candidacy.

It is recognized that labor organizations may have a legitimate institutional interest in prescribing minimum standards for candidacy and office-holding in the organization. On the other hand, a dominant purpose of the Act is to ensure the right of members to participate fully in governing their union and to make its officers responsive to the members. A basic assumption underlying the concept of "free and democratic elections," is that voters will exercise common sense and good judgment in casting their ballots. In union elections as in political elections, the good judgment of the members in casting their votes should be the primary determinant of whether a candidate is qualified to hold office. Therefore, restrictions placed on the right of members to be candidates must be closely scrutinized to determine whether they serve union purposes of such importance, in terms of protecting the union as an institution, as to justify subordinating the right of the individual member to seek office and the interest of the membership in a free, democratic choice of leaders.

§ 452.36 Reasonableness of qualifications.

(a) The question of whether a qualification is reasonable is a matter which is not susceptible of precise definition, and will ordinarily turn on the facts in each case. However, court decisions in deciding particular cases have furnished some general guidelines. The Supreme Court in *Wirtz v. Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492 at 499 (1968) held that:

Congress plainly did not intend that the authorization in section 401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach. The contrary is implicit in the legislative history of the section and in its wording that 'every member in good standing shall be eligible to be a candidate and to hold office * * *'. This conclusion is buttressed by other provisions of the Act

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which stress freedom of members to nominate candidates for Office. Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents.

Union qualifications for office should not be based on assumptions that certain experience or qualifications are necessary. Rather it must be assumed that the labor organization members will exercise common sense and judgment in casting their ballots. "Congress' model of democratic elections was political elections in this country" (*Wirtz v. Local 6*, 391 U.S. at 502) and a qualification may not be required without a showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when voting as union members.

(b) Some factors to be considered, therefore, in assessing the reasonableness of a qualification for union office are:

(1) The relationship of the qualification to the legitimate needs and interests of the union;

(2) The relationship of the qualification to the demands of union office;

(3) The impact of the qualification, in the light of the Congressional purpose of fostering the broadest possible participation in union affairs;

(4) A comparison of the particular qualification with the requirements for holding office generally prescribed by other labor organizations; and

(5) The degree of difficulty in meeting a qualification by union members.

§ 452.37 Types of qualifications.

Ordinarily the following types of requirements may be considered reasonable, depending on the circumstances in which they are applied and the effect of their application:

(a) *Period of prior membership.* It would ordinarily be reasonable for a local union to require a candidate to have been a member of the organization for a reasonable period of time, not exceeding two years, before the election. However, if a member is involuntarily compelled to transfer from